

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
EMILY SLOAN, et al.,

Plaintiffs,

-versus-

05 CV 7668 (KMK) (JCF)

THE CITY OF NEW YORK, et al.

ECF CASE

Defendants.
----- X

ANSWER

Defendants The City of New York, Anthony Bologna, Keith Morse, Timothy Cai, Vincent Fortunato, Neil Rodriguez, Jean Vergin and Hudson River Park Trust (“Defendants”), by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the First Amended Complaint (“Complaint”), respectfully allege, upon information and belief, as follows:

AS TO THE “PRELIMINARY STATEMENT”

1. Defendants deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiffs seek relief.

AS TO “JURISDICTION”

2. Defendants deny the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiffs purport to invoke the Court’s jurisdiction as stated therein.

3. Defendants deny the allegations set forth in paragraph "3" of the Complaint, except admit that plaintiffs purport to invoke the Court’s jurisdiction as stated therein.

AS TO "JURY TRIAL DEMANDED"

4. Defendants deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiffs demand a trial by jury.

AS TO "VENUE"

5. Defendants deny the allegations set forth in paragraph "5" of the Complaint, except admit that plaintiffs allege that venue is proper as stated therein.

AS TO "NOTICE OF CLAIM"

6. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the Complaint.

AS TO "PARTIES"

8. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "8" of the Complaint.

9. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the Complaint.

10. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "10" of the Complaint.

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "11" of the Complaint.

12. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the Complaint.

13. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the Complaint.

14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the Complaint.

15. Defendants deny the allegations set forth in paragraph "15" of the Complaint, except admit that The City of New York is a municipal corporation duly organized and operating under the laws of the State of New York.

16. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the Complaint, except admit that Defendants Bologna, Morse, Cai, Fortunato, Rodriguez and Vergin are employees of the City of New York.

17. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the Complaint.

18. Defendants deny the allegations set forth in paragraph "18" of the Complaint, except admit that Hudson River Park Trust entered into agreement with the City of New York in connection with the use of Pier 57.

AS TO "STATEMENT OF FACTS"

19. Defendants deny the allegations set forth in paragraph "19" of the Complaint.

20. Defendants deny the allegations set forth in paragraph "20" of the Complaint.

21. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint.

22. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "22" of the Complaint.

23. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "23" of the Complaint.

24. Defendants deny the allegations set forth in paragraph "24" of the Complaint.

25. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the Complaint.

26. Defendants deny the allegations set forth in paragraph "26" of the Complaint.

27. Defendants deny the allegations set forth in paragraph "27" of the Complaint.

28. Defendants deny the allegations set forth in paragraph "28" of the Complaint, except admit that Hudson River Park Trust entered into agreement with the City of New York in connection with the use of Pier 57.

29. Defendants deny the allegations set forth in paragraph "29" of the Complaint.

30. Defendants deny the allegations set forth in paragraph "30" of the Complaint.

31. Defendants deny the allegations set forth in paragraph "31" of the Complaint.

32. Defendants deny the allegations set forth in paragraph "32" of the Complaint.

33. Defendants deny the allegations set forth in paragraph "33" of the Complaint.

34. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the Complaint.

35. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "35" of the Complaint.

36. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the Complaint.

37. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the Complaint.

38. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “38” of the Complaint.

39. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “39” of the Complaint.

40. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “40” of the Complaint.

41. Defendants deny the allegations set forth in paragraph “41” of the Complaint.

42. Defendants deny the allegations set forth in paragraph “42” of the Complaint.

43. Defendants deny the allegations set forth in paragraph "43" of the Complaint.

44. Defendants deny the allegations set forth in paragraph "44" of the Complaint.

AS TO THE "FIRST CLAIM"

45. In response to the allegations set forth in paragraph "45" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

46. Defendants deny the allegations set forth in paragraph "46" of the Complaint.

47. Defendants deny the allegations set forth in paragraph "47" of the Complaint.

AS TO THE "SECOND CLAIM"

48. In response to the allegations set forth in paragraph "48" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

49. Defendants deny the allegations set forth in paragraph "49" of the Complaint.

50. Defendants deny the allegations set forth in paragraph "50" of the Complaint.

AS TO THE "THIRD CLAIM"

51. In response to the allegations set forth in paragraph "51" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

52. Defendants deny the allegations set forth in paragraph "52" of the Complaint.

53. Defendants deny the allegations set forth in paragraph "53" of the Complaint.

54. Defendants deny the allegations set forth in paragraph "54" of the Complaint.

55. Defendants deny the allegations set forth in paragraph "55" of the Complaint.

56. Defendants deny the allegations set forth in paragraph "56" of the Complaint.

AS TO THE "FOURTH CLAIM"

57. In response to the allegations set forth in paragraph "57" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

58. Defendants deny the allegations set forth in paragraph "58" of the Complaint.

59. Defendants deny the allegations set forth in paragraph "59" of the Complaint.

60. Defendants deny the allegations set forth in paragraph "60" of the Complaint.

61. Defendants deny the allegations set forth in paragraph "61" of the Complaint.

62. Defendants deny the allegations set forth in paragraph "62" of the Complaint.

AS TO THE "FIFTH CLAIM"

63. In response to the allegations set forth in paragraph "63" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

64. Defendants deny the allegations set forth in paragraph "64" of the Complaint.

65. Defendants deny the allegations set forth in paragraph "65" of the Complaint.

66. Defendants deny the allegations set forth in paragraph "66" of the Complaint.

AS TO THE "SIXTH CLAIM"

67. In response to the allegations set forth in paragraph "67" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

68. Defendants deny the allegations set forth in paragraph "68" of the Complaint.

69. Defendants deny the allegations set forth in paragraph "69" of the Complaint.

AS TO THE "SEVENTH CLAIM"

70. In response to the allegations set forth in paragraph "70" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

71. Defendants deny the allegations set forth in paragraph "71" of the Complaint.

72. Defendants deny the allegations set forth in paragraph "72" of the Complaint.

AS TO THE "EIGHTH CLAIM"

73. In response to the allegations set forth in paragraph "73" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

74. Defendants deny the allegations set forth in paragraph "74" of the Complaint.

75. Defendants deny the allegations set forth in paragraph "75" of the Complaint.

AS TO THE "NINTH CLAIM"

76. In response to the allegations set forth in paragraph "76" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

77. Defendants deny the allegations set forth in paragraph "77" of the Complaint.

78. Defendants deny the allegations set forth in paragraph "78" of the Complaint.

AS TO THE "TENTH CLAIM"

79. In response to the allegations set forth in paragraph "79" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

80. Defendants deny the allegations set forth in paragraph "80" of the Complaint.

81. Defendants deny the allegations set forth in paragraph "81" of the Complaint.

AS TO THE "ELEVENTH CLAIM"

82. In response to the allegations set forth in paragraph "82" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

83. Defendants deny the allegations set forth in paragraph "83" of the Complaint.

84. Defendants deny the allegations set forth in paragraph "84" of the Complaint.

AS TO THE "TWELFTH CLAIM"

85. In response to the allegations set forth in paragraph "85" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

86. Defendants deny the allegations set forth in paragraph "86" of the Complaint.

87. Defendants deny the allegations set forth in paragraph "87" of the Complaint.

AS TO THE "THIRTEENTH CLAIM"

88. In response to the allegations set forth in paragraph "88" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

89. Defendants deny the allegations set forth in paragraph "89" of the Complaint.

90. Defendants deny the allegations set forth in paragraph "90" of the Complaint.

AS TO THE "FOURTEENTH CLAIM"

91. In response to the allegations set forth in paragraph "91" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

92. Defendants deny the allegations set forth in paragraph "92" of the Complaint.

93. Defendants deny the allegations set forth in paragraph "93" of the Complaint.

AS TO THE "FIFTEENTH CLAIM"

94. In response to the allegations set forth in paragraph "94" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

95. Defendants deny the allegations set forth in paragraph "95" of the Complaint.

96. Defendants deny the allegations set forth in paragraph "96" of the Complaint.

AS TO THE "SIXTEENTH CLAIM"

97. In response to the allegations set forth in paragraph "97" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of their answer, as if fully set forth herein.

98. Defendants deny the allegations set forth in paragraph "98" of the Complaint.

99. Defendants deny the allegations set forth in paragraph "99" of the Complaint.

100. Defendants deny the remaining allegations of the Complaint.

FIRST AFFIRMATIVE DEFENSE

101. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

102. There was probable cause for plaintiffs' arrest, detention and prosecution.

THIRD AFFIRMATIVE DEFENSE

103. Any and all injuries alleged in the Complaint were caused, in whole or in part, by plaintiffs' culpable, negligent or intervening conduct and were not the proximate result of any act of Defendants.

FOURTH AFFIRMATIVE DEFENSE

104. This action is barred, in whole or in part, by the doctrines of *res judicata* and collateral estoppel.

FIFTH AFFIRMATIVE DEFENSE

105. Defendants have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and, therefore, they are entitled to qualified immunity.

SIXTH AFFIRMATIVE DEFENSE

106. Punitive damages are not recoverable against The City of New York. Punitive damages cannot be recovered against the other Defendants and, if available, the amount of such damages shall be limited by applicable state and federal law, including due process and other provisions of law.

SEVENTH AFFIRMATIVE DEFENSE

107. Defendants have not violated any rights, privileges or immunities secured to the plaintiffs under the Constitution, the laws of the United States, the laws of the State of New York or any political subdivision thereof, nor have Defendants violated any act of Congress providing for the protection of civil rights.

EIGHTH AFFIRMATIVE DEFENSE

108. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion.

NINTH AFFIRMATIVE DEFENSE

109. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion. Therefore, Defendant The City of New York is entitled to governmental immunity from liability.

TENTH AFFIRMATIVE DEFENSE

110. Plaintiffs' claims are barred, in whole or in part, by their failure to comply with the conditions precedent to suit including, but not limited to, New York General Municipal Law §§ 50-e and 50-i.

ELEVENTH AFFIRMATIVE DEFENSE

111. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

TWELFTH AFFIRMATIVE DEFENSE

112. Plaintiffs' claims are barred, in whole or in part, by the doctrine of absolute immunity.

THIRTEENTH AFFIRMATIVE DEFENSE

113. Process, or service of process, upon one or more of the Defendants was insufficient.

FOURTEENTH AFFIRMATIVE DEFENSE

114. The Court lacks personal jurisdiction over one or more of the Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

115. To the extent that Defendants used any force, it was reasonable, necessary and justified to accomplish their official duties and to protect their own physical safety and the physical safety of others.

SIXTEENTH AFFIRMATIVE DEFENSE

116. Plaintiffs failed to mitigate plaintiffs' damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

117. Plaintiffs consented to the acts about which plaintiffs complain.

EIGHTEENTH AFFIRMATIVE DEFENSE

118. Plaintiffs' claims are barred, in whole or in part, by plaintiffs' contributory or comparative negligence and by plaintiffs' assumption of the risk.

NINETEENTH AFFIRMATIVE DEFENSE

119. Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, waiver and estoppel.

WHEREFORE, Defendants request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 6, 2006

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street, Room 3-137
New York, New York 10007
(212) 788-8026

By: _____/s/_____
James Mirro (JM 2265)
Special Assistant Corporation Counsel
Special Federal Litigation Division

05 CV 7668 (KMK) (JCF)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EMILY SLOAN, et al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

ANSWER

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007